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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
Gabrielle Ann Sodergren,
Debtor.

Chapter 13
Case No.: 2:16-bk-12689-SHG
Adv. Pro.: 2:17-ap-00267-SHG

**REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AND
OPPOSITION TO CROSS-MOTION
FOR SUMMARY JUDGMENT**

Gabrielle Ann Sodergren,
Plaintiff/Counter-defendant,
vs.
Daniel Rychlik,
Defendant/Counterclaimant.

Plaintiff/Counter-Defendant Gabrielle Sodergren (“Sodergren”), by and through counsel undersigned, hereby files her Reply in Support of her Motion for Summary Judgment regarding her two claims for Declaratory Relief and Dischargeability of Defendant’s Award against Daniel Rychlik (“Rychlik”), as set-forth in her First Amended Complaint *and* in opposition to the Cross-Motion for Summary Judgment on the Counterclaim for Declaratory Relief filed by Rychlik, pursuant to FRBP 7056 and FRCP 56(a).

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1 parties relative financial resources within the order. The family court was silent on the
2 issue.

3 Analysis

4 Rychlik cites four cases in support of his position that there is a presumption that the
5 order is a support obligation. *In re Bradshaw*, Case No. BR-05-24647-PHX-CGC (Bankr.
6 Ariz. 8/24/2007) (Bankr. Ariz. 2007), *In re Change*, 163 F.3d 1138 (9th Cir. 1998), *In re:*
7 *Catlow*, 663 F.2d 960 (9th Cir. 1981) and *In re Jarski*, 301 B.R. 342 (Bankr. D. Ariz. 2003)
8 are all distinguishable. *Change*, *Catlow*, and *Jarski* all involve a mix of both attorney fees
9 and other obligations with clear findings of fact relating to the parties respective financial
10 positions, making all three distinguishable. *Bradshaw* appears to deal with a similarly
11 vague global award of attorney fees after a hotly contested child custody battle. In
12 *Bradshaw*, Judge Case considered the entire record and ordered the parties to submit
13 supplemental briefs containing the state court transcripts so that he could review the case as
14 a whole. In *Bradshaw*, the family court made very specific findings based upon the parties
15 financial positions and even provided a calculation demonstrating the basis for the family
16 court's attorney fee award. Judge Case found the order to be in the nature of support after
17 consideration of the record as a whole.

18 This Court should follow the procedure from *Bradshaw* and consider the entire
19 family court record in interpreting the vague order of attorney fees and costs. However,
20 unlike *Bradshaw*, in this case every order issued by the family court that specifically
21 addresses the parties respective financial resources finds that it is Sodergren – not Rychlik –
22 who is entitled to support.¹ A fair reading of the family court record shows that the court
23 took a punitive measure against Sodergren and did not make a determination that Sodergren
24 should pay support to Rychlik to balance the respective financial resources.

25 Next, Rychlik contends that A.R.S. § 25-403.09 and *Heidbreder v. Heidbreder*, 284
26 P.3d 888at ¶ 7 (Ariz. App. 2012) support the notation that any order relating to custody is

27 ¹ Rychlik contends that Sodergren was ordered to pay child support. This is not true.
28 See Sodergren's Response to Rychlik's SSOF filed concurrently herewith at ¶ 7.

1 an award of support. This is at odds with *Bradshaw*, *Jarski* and cases cited in Sodergren's
2 Motion which clearly show that an award of attorney fees issued in a custody battle can be a
3 sanction and therefore dischargeable. *Heidbreder* involved a mother's petition to modify
4 parenting time and custody. The family court raised the child support issue *sua sponte*.
5 The statute and the case require the family court to revisit the issue when there is a change.
6 That is not what happened here. The status quo was preserved because the children stayed
7 in Arizona. The family court, although it could have, did not specifically revisit the issue of
8 support. Thus, it can be inferred that the family court did not find grounds to change or
9 modify the support orders which were always that it is Rychlik who must pay Sodergren.

10 Finally, Rychlik contends that A.R.S. § 25-324(B) could not have been considered
11 by the court because it was Rychlik, and not Sodergren, who filed the petition. The
12 argument is form over substance. The status quo was that the children should not be
13 relocated to Illinois. Sodergren sent a letter to Rychlik stating her intent to move the
14 children to Illinois. Rychlik filed a petition to prevent her. In response, Sodergren asked
15 for affirmative relief to move the children to Illinois. The statutory interpretation offered by
16 Rychlik is in conflict with its spirit.

17 CONCLUSION

18 The order in dispute was prepared by Rychlik's counsel. If Rychlik desired the order
19 to be in the form of support he should have indicated as such, especially with his knowledge
20 that the protracted divorce proceedings had left Sodergren financially wounded with
21 bankruptcy being a real possibility. Instead, the order is vague thus the Court must look to
22 the entire record to determine if the order is a sanction or support. The family court
23 specifically addresses the issue of support in Sodergren's favor at different stages of the
24 divorce proceeding, but does not specifically address support or even attempt to balance the
25 parties respective financial resources in issuing the order that is the subject of this dispute.
26 The disputed order did not change the prior law of the case. Sodergren respectfully requests
27 that the Court issue an order consistent with the relief as prayed for her in Motion for
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1 Summary Judgment and First Amended Complaint and that Rychlik's request for Summary
2 Judgment be denied in its entirety.

3 DATED: April 17, 2018

THE TURNAROUND TEAM PLLC

4 /s/Kyle A. Kinney

5 Kyle A. Kinney

Attorneys for Debtor

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7 I certify that the foregoing was submitted
8 on April 17, 2018 to the United States
9 Bankruptcy Court for filing and
10 transmittal of notice of electronic filing
to the ECF registrants appearing in this
case, and by email to:

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20 By: /s/ Paula D. Hillock